

IN THE MATTER OF	:	BEFORE THE
<b>JOHN AND SUSAN HARRISON</b>	:	HOWARD COUNTY
<b>T/A ENGLISH LAWN AND</b>	:	BOARD OF APPEALS
<b>GARDEN</b>	:	
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 08-007C

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### **DECISION AND ORDER**

On April 21, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of John and Susan Harrison, T/A English Lawn and Garden, to permit the operation of a landscape contractor conditional use in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District pursuant to Section 131.N.31 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Mr. Thomas Meachum, Esquire, represented the Petitioners. Susan Harrison and Peter Stone testified in favor of the petition. Kim Hobson testified in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located in the 4<sup>th</sup> Election District on the south side of Frederick Road and US 40, about 500 feet west of Long Corner Road and is also known as

17885 Frederick Road (MD 144) (the "Property"). The Property is referenced as Tax Map 1 Block 24, Parcel 8, Parcel A.

2. The Property is an irregularly shaped, 31.14-acre parcel with about 2,300 frontage feet and ranges in width from 400 feet in its center section to 850 feet in the southernmost section. Its western boundary abuts the Carroll County line.

3. The developed area is generally situated in the center of the Property. To the east of the centrally located driveway entrance off MD 144 is an approximately 90' x 20' greenhouse with a woodpile to its north and a truck parking/mulch pile/soil pile area to the south. To the driveway's northwest is a one-story dwelling situated about 150 feet from MD 144. Beyond the greenhouse and further south is an approximately 70' x 50' barn situated about 190 feet from the rear property line. To the west of these structures is a second barn and tractor parking area, and beyond these, a firewood pile. Further west is a one-story frame building.

The westernmost portion of the site is predominately wooded. A stream runs through the Property's back section. The Property also has about 52 feet of frontage on Long Corner Road to the southeast. A driveway runs through this section and provides access to a compost pile situated about 116 feet from the rear property line.

4. In December 2006, a Deed of Preservation Easement (the "Deed") was executed for the Property in relation to the transfer of density credits. The Deed states as its purpose the conservation of the dominant scenic cultural, rural, agricultural, woodland and wetland character of the Preservation Parcel and prevents the Property's use or development for any purposed that would conflict with the maintenance of the Preservation Parcel. Article II requires the Howard County Board of Appeals to determine the compatibility of a conditional use with the uses set forth in the Deed.

Vicinal Properties. The adjacent properties to the south and east and across MD 144 and I-70 are also zoned RC-DEO. Parcel 7 to the Property's south is encumbered with a preservation parcel. The parcels to the southeast are in residential use. The closest residence on adjoining Parcel 56 is more than 250 feet from its rear lot line.

5. MD 144 is a Minor Arterial road with one travel lane in each direction and about 45 feet of paving within a variable width right-of-way. Long Corner Road has one travel lane in each direction.

6. The Property is served by private well and septic facilities.

7. The Property is designated Rural Conservation on the 2000 General Plan's Policies Map 200-2020.

8. The Petitioners are seeking retroactive approval for a landscape contractor conditional use. The Petitioners have operated the use, known as English Lawn and Garden, since 1976. The permitted residential use of the Property would also continue. No new structures or uses are proposed. According to the Technical Staff Report (the "TSR"), existing on-site activities include the loading of mulch, plants and soil onto trucks for transport off-site. Mulch is delivered twice a month and soil, once a month. Equipment is stored in the barns. The greenhouses are used to grow flowers and other plants. Two trucks, each less than five tons, transport materials and employees to off-site locations. Two additional employees arrive at the site in the morning, load trucks, and leave for the day. At the end of each workday, one employee loads a truck with compost material for delivery to the compost area. The proposed hours of operation are Monday-Friday, 6:30 a.m. to 7:00 p.m. A 600-foot evergreen screen consisting of 50 trees, six to eight feet in height, spaced 10 to 12 feet apart, is proposed along the MD 144 frontage adjacent to the developed portion of the Property.

9. Kim Hobson testified that the compost area was being used as an illegal dumping site.

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude as follows:

**I. General Criteria for Conditional Uses (Section 131.B)**

1. Harmony with the General Plan. Section 131.B.1 requires me to determine that the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district in which it is located. In evaluating the plan under this standard, I am to consider two criteria.

- a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site.

In this case, the proposed landscape contractor operation would be conducted on a 31.14-acre parcel that is also the Petitioner's residence. The Property lies in the westernmost part of Howard County, which is predominately rural and agricultural in nature. It fronts on a Minor Arterial Road and has easy access to I-70 to the north. With the exception of the compost pile, the operation is situated close to MD 144. Given the predominately off-site nature and hours of operation, the landscape contractor operation is an appropriate intensity of use, in accordance with Section 131.B.1.a.

- b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

The landscape contractor operation will be combined with a permitted residential use. No new structures are proposed and the existing buildings used in the operation are at least 100 feet from property lines. The Property is heavily wooded and the Petitioner is proposing to landscape that portion of use along MD 144. The proposed use complies with Section 131.B.1.b.

2. Adverse Impact on Vicinal Properties. For the reasons stated below, the proposed use at the proposed location will not have adverse effects on vicinal properties beyond those ordinarily associated with such uses.

- a. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

Although the uses will be outdoors and would presumably generate some dust and noise during the hours of operation, most of the work will be off-site, and vicinal properties would be buffered by the existing woods and landscape screening.

- b. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The structures will be located more than 100 feet from property lines. Existing woods and proposed landscaping will help screen the uses.

- c. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

There are no specific parking requirements for a landscape contractor. The Conditional Use Plan depicts a designated truck parking area. Two parking spaces are required for the residential use. The site can accommodate these spaces as well as parking spaces for the employees.

- d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The existing driveway will provide safe access with adequate sight distance.

**II. Specific Criteria for a Landscape Contractor Conditional Use (Section 131.N.31)**

1. The Property on which the use will operate is 31.14 acres in area, which exceeds the five-acre minimum. The proposed conditional use complies with Section 131.N.31.a.

2. All storage structures and bins, parking, and driveways are at least 100 feet from lot lines. Consequently, the use will not adversely affect neighboring properties due to visual impact, activity, noise, dust, fumes or other cause. The proposed conditional use complies with Section 131.N.31.b.

3. The location and design of the operation will not be a nuisance to neighboring properties due to noise, dust, or fumes, subject to the condition of approval that the Petitioners erect a locked gate at the rear of the Long Corner Road frontage near the rear lot lines of the adjoining residential properties. This will ensure that only the landscape contractor operation has access to the large compost area in the woods. The storage areas, driveways, and parking areas for the landscape contracting operation will be located at least 100 feet from property lines. The closest residential structure is more than 800 feet from the eastern property line. Subject to the condition of approval, the proposed use complies with Section 131.N.31.c.

4. The barns and greenhouses have existed in their present location for many years and are compatible in scale and character with other residential or agricultural structures in the vicinity, in accordance with Section 131.N.31.d.

5. Section 131.N.31.e is applicable only to retail nurseries or greenhouses.

6. Specific requirements for landscape contractors

a. Section 131.N.31.f(1) is inapplicable because the operation is not a home-based contractor.

b. Although the Conditional Use Plan does not depict a 100-foot landscape contractor setback line, all parking and storage areas are more than 100 feet from lot lines. The proposed

evergreen screen along a portion of MD 144 will provide adequate screening of the use from the public road. The proposed use complies with Section 131.N.31.f(2).

c. No accessory sales of gardening or lawn care items are proposed. The proposed use complies with Section 131.N.31.f(3).

d. Adequate landscaping will be provided to screen parking, storage, and other activity areas related to the conditional use from residential properties, in accordance with Section 131.N.31.f(4).

e. According to the evidence and testimony, the barn will be used for some equipment repair. Subject to the condition that only minor repairs to vehicles or equipment occur inside the structures, the proposed use complies with Section 131.N.31.f(5).

### **III. Compatibility of The Conditional Use with the Uses Set Forth in the Preservation Deed**

The Deed states as its purpose the conservation of the dominant scenic cultural, rural, agricultural, woodland and wetland character of the Preservation Parcel and prevents the Property's use or development for any purpose that would conflict with the maintenance of the Preservation Parcel. Because the Property was in use as a landscape contractor operation when the Petitioners executed the deed, and landscape contracting is consistent with the agricultural and woodland character of the Preservation Parcel, its continued use as same will help to conserve the Parcel's character. I therefore conclude the Property's use does not conflict with the maintenance of the Preservation Parcel.

**ORDER**

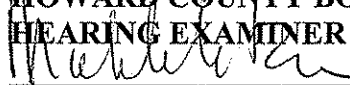
Based upon the foregoing, it is this 13<sup>th</sup> day of May 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of John and Susan Harrison, T/A English Lawn and Garden, for a Landscape Contractor Operation Conditional Use in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning, is hereby **GRANTED**;

**Provided, however, that:**

1. The conditional use will apply only to the uses and structures as described in the petition and Conditional Use Plan dated January 25, 2008, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioners shall install a 600-foot evergreen screen consisting of 50 trees, six to eight feet in height, spaced 10 to 12 feet apart, along the MD 144 frontage adjacent to the developed portion of the Property.
3. The Petitioners shall erect a locked gate at the rear of the Long Corner Road frontage near the rear lot lines of the adjoining residential properties to limit access to the compost area.
4. The barn may be used for minor equipment repair. No bodywork, rebuilding, engine reconditioning, painting, or similar activities are permitted.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
Michele L. LeFaivre

Date Mailed: 5/14/08

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.